

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-452-C

In Re:)	
Application of Broadview Networks)	
Incorporated for a Certificate of Public)	STIPULATION AGREEMENT
Convenience and Necessity to Provide)	
Resold and Facilities-Based Local)	
Exchange Telecommunications Services)	
in the State of South Carolina, and for)	
Flexible Regulation)	

This Stipulation Agreement (“Stipulation Agreement”) is made by and among the Office of Regulatory Staff (“ORS”) and Broadview Networks, Inc. (“Broadview” or the “Corporation”) (collectively referred to as the “Parties” or sometimes individually as “Party”);

WHEREAS, on October 22, 2009, Broadview filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing Broadview to provide resold and facilities based local exchange services throughout the State of South Carolina, pursuant to S.C. Code Ann. §58-9-280(B), as amended, 26 S.C. Reg. 103-823 and Section 253 of the Telecommunications Act of 1996; (ii) flexible regulation of its local exchange services, consistent with Order No. 98-165 in Docket No. 97-467-C; and (iii) for waiver of certain Public Service Commission of South Carolina (“Commission”) Regulations;

WHEREAS on October 27, 2009, the Commission issued a Notice of Filing and Hearing and established a return date of November 25, 2009, for the filing of letters of protest or petitions to intervene and established a hearing date of January 6, 2010, for the application to be heard before hearing examiner Randall Dong, Esquire;

WHEREAS, on December 2, 2009, the Corporation filed the verified direct testimony of Charles C. Hunter with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by Broadview and its requests (i) for a Certificate of Public Convenience and Necessity to provide resold and facilities based local exchange within the State of South Carolina; (ii) for flexible regulation of its local exchange services and (iii) for waiver of certain regulations of the Public Service Commission of South Carolina (“Commission”), specifically Regulations 103-610 and 103-612.2.3;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of Broadview to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application, the testimony of Mr. Hunter, and the financial data provided by Broadview, and ORS has calculated certain performance ratios based upon information provided by Broadview;

WHEREAS, ORS has investigated the services to be offered by Broadview and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by Broadview;

WHEREAS, as a result of its investigations, ORS has determined (a) Broadview intends to offer resold and facilities based local services; (b) the officers of Broadview possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) Broadview’s proposed tariff with the amendments as agreed to in this Stipulation Agreement comply with Commission statutes and regulations; (d) the provision of services by Broadview will not adversely impact the availability of affordable telecommunications services; and (e) to the extent

it is required to do so by the Commission, Broadview will participate in the support of universally available telephone service at affordable rates;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree to submit into the record before the Commission this Stipulation Agreement. The Parties also agree to stipulate to the filed verified direct testimony of the Corporation's witness Charles C. Hunter without cross-examination by ORS. ORS does not object to this application being submitted for expedited review by the Commission without a formal hearing.

2) The Corporation has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2008) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Corporation to maintain its books and records outside of the State of South Carolina in exchange for the Corporation agreeing to provide access to its books and records. ORS is agreeable to the Corporation maintaining its books and records at its principal offices in Rye Brook, New York and the Corporation agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are

maintained. This provision of the Stipulation Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2008) or § 58-9-1070 (Supp. 2008). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

3) The Corporation agrees to keep its books, papers, and records in such a manner that permits ORS to audit revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund (“USF”), the Interim LEC Fund, and gross receipts. The Corporation agrees that its books, papers and records shall be maintained in a manner such that Corporation revenues and expenditures related to its operations in South Carolina can be segregated from revenues and expenditures related to operations in other jurisdictions and that South Carolina jurisdictional revenues and expenditures may be reconciled to total Corporation revenues and expenditures from operations in all jurisdictions. The Corporation agrees to complete the reporting forms for such programs as, but not limited to, the annual report, USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

4) ORS does not oppose the Corporation’s request for waiver of 26 S.C. Code Ann. Regs. 103-612.2.3 which requires the filing of operating maps. However, should the Corporation establish local exchange service areas which differ from those of the incumbent local exchange carriers, the Corporation agrees it will notify the Commission and ORS of the change and file updated service maps;

5) ORS does not oppose Broadview's requests for flexible regulation of its local exchange services consistent with the procedures described and set forth in Order No. 98-165 in Docket No. 97-467-C. Flexible regulation includes (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days.

6) Broadview agrees to resell the services only of those local exchange providers authorized to do business in South Carolina by the Commission;

7) Broadview agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

8) Broadview agrees to file necessary financial information as directed by the Commission or ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Broadview. The Parties agree that such reports shall be filed pursuant to ORS' instructions and monies shall be remitted in accordance with the directions of the ORS and/or the Commission.

9) Broadview agrees to maintain its books and records in a manner that would permit ORS to examine any of Broadview's reports filed with the Commission and provided to ORS.

10) Broadview agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

11) Broadview agrees to comply with Commission Regulation 103-607 in that it will obtain a bond, irrevocable letter of credit, or certificate of deposit per the Commission's request if Broadview provides pre-paid local exchange services.

12) Broadview agrees to comply with the verification regulations governing change of preferred carriers as established by the Federal Communications Commission ("FCC"). Broadview agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

13) Broadview agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Broadview agrees to adhere to the FCC rules 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, Broadview shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

14) To the extent necessary, Broadview agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

15) Broadview agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." Broadview agrees to contact the appropriate authorities regarding 911 services in the counties and cities where Broadview will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding Broadview's operations.

16) Broadview agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

17) Broadview agrees to file a final revised tariff with both the ORS and the Commission within 30 days of the Commission's order granting Broadview's application and the revised tariff shall reflect and be in accordance with ORS' recommendations.

18) "Corporation" shall file its revised tariff within thirty (30) days of receipt of this Order utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

19) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation Agreement reached among the Parties serves the public interest as defined above;

20) The Parties agree to advocate that the Commission accept and approve this Stipulation Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation Agreement and the terms and conditions contained herein.

21) The Parties agree that signing this Stipulation Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation Agreement in its entirety, then any Party desiring to do so may withdraw from the Stipulation Agreement in its entirety without penalty or obligation.

22) This Stipulation Agreement shall be interpreted according to South Carolina law.

23) The Parties represent that the terms of this Stipulation Agreement are based upon full and accurate information known as of the date this Stipulation Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Stipulation Agreement is based, either Party may withdraw from the Stipulation Agreement with written notice to the other Party.

24) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this

document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Stipulation Agreement and the terms contained herein, then this Stipulation Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the Office of Regulatory Staff

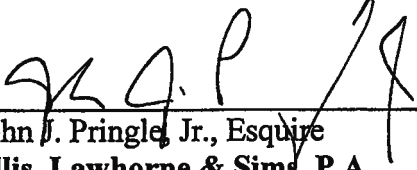


Nanette S. Edwards
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
Telephone: (803) 737-0575
Fax: (803) 737-0895
Email: nsedwar@regstaff.sc.gov

12/23/09
Date

WE AGREE:

Representing Broadview Networks Incorporated



John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202
Phone: 803-343-1270
Fax: 803-779-4749
jpringle@ellislawhome.com

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Date


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DOCKET NO. 2009-452-C

IN RE: Application of Broadview Networks,
Incorporated for a Certificate of Public)
Convenience and Necessity to Provide Resold) **CERTIFICATE OF**
and Facilities-Based Local Exchange) **SERVICE**
Telecommunications Services in the State of)
South Carolina and for Flexible Regulation

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **STIPULATION AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

John. J. Pringle, Jr, Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC, 29202

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
Sue-Ann Gerald Shannon, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211



Pamela J. McMullan

December 23, 2009
Columbia, South Carolina